IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 74 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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KANJIBHAI MAVJIBHAI KALSARIA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
NOTICE SERVED for Appellant(s) : 1,MR UTPAL M PANCHAL for Appellant(s) : 1,MR KC PANWALA for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 13th - 16th /08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the judgment and order dated 5th December, 1998 passed by the learned Addl. Sessions Judge, Valsad at Navsari in Sessions Case No. 28 of 1994 whereby, the appellant was convicted for the offences punishable u/s. 201, 392 & 302 of the Indian Penal Code, 1860 (for short, "the I.P.C."). For conviction u/s. 201 of I.P.C., the appellant was sentenced to undergo Rigorous Imprisonment for a period of Five Years with fine of Rs.2000/- and in default of payment of fine, Rigorous Imprisonment for a further period of Nine Months; while for conviction u/s. 392 of I.P.C., the appellant was sentenced to undergo Rigorous Imprisonment for a period of Five Years with fine of Rs.2000/- and in default of payment of fine, Rigorous Imprisonment for a further period of Nine Months. For conviction u/s. 302 of I.P.C., the appellant was sentenced to undergo imprisonment for Life with fine of Rs.5000/- and in default of payment of fine, Rigorous Imprisonment for a further period of One Year. All the sentences were ordered to run concurrently. The appellant was also given the benefit of set-

off.

2.0 The brief facts of the prosecution case are as under;

2.1 The appellant – accused was engaged in the manufacture of wooden boxes and also in the business of trading in diamonds in Valsad. As the appellant suffered huge losses in his business of manufacture of wooden boxes, he started collecting funds from different sources at high rates of interests. Since the family of the co-brother of the appellant was also engaged in the business of trading in diamonds at Navsari, the appellant thought that he would get some financial help from them. Accordingly, some where in the month of October 1993, the appellant requested his co-brother, Himmatbhai Laxmanbhai Kalsaria, to provide him financial assistance to the tune of Rs.50,000/- by way of loan. However, said Himmatbhai declined to provide any such help to the appellant.

2.2 On 18.10.1993, in the evening hours, the appellant

visited the house of his co-brother – Himmatbhai, and requested him to lent diamonds on credit from any other trader by paying the necessary amount on condition that he would return the said amount on expiry of a period of three months from the date he lents the said amount. Himmatbhai agreed to the request made by the appellant and informed him to come on the next day morning, i.e. on 19.10.1993.

2.3 Accordingly, on 19.10.1993, at around 0530 hrs., the appellant reached the house of Himmatbhai and, thereafter, both of them proceeded towards Valsad in the Fiat Car bearing Registration No. GTN – 5771 and driven by the appellant. When they reached near Navsari slums Road, Himmatbhai informed the appellant that he could not arrange for the said money and, therefore, he would not be able to lent him diamonds on credit. On hearing the same, the appellant got enraged and he started hurling him abuses. Subsequently, a quarrel took place between them and, in the process, the appellant gave fist blows on different parts of the body of Himmatbhai and also gave a hammer

blow on the head of Himmatbhai. As a result of that Himmatbhai became unconscious. Thereafter, he placed Himmatbhai in the rear-seat of the Car and, some time later, when they reached Amalsad, the appellant realized that Himmatbhai has expired. Therefore, he drove the Car towards Sachin, GIDC and threw the dead body of deceased Himmatbhai in a nearby area.

2.4 After cleaning the seats of the Car, the appellant returned to Navsari at around 1130 hrs. and then went to 'Sattapir' market, after parking the Car near 'Gohil' Hospital. In the said market, he made enquiries from some traders as to the whereabouts of Jivanbhai Laxmanbhai Kalsaria, younger brother of deceased Himmatbhai. On enquiry, as the appellant came to know that Jivanbhai had gone to some other place, he went to the house of deceased Himmatbhai by taking lift in a motor-cycle driven by one Arvindbhai Mathurbhai Pandav wherein one Babubhai @ Arvindbhai Manibhai was the pillion rider since both these persons knew the family of deceased Himmatbhai. The appellant got

down near the house of deceased Himmatbhai. At around 1345 hrs., the appellant met Jivanbhai and informed him that deceased Himmatbhai has directly proceeded towards Vadodara District from Valsad District by Train and that he is being called their by deceased Himmatbhai. Accordingly, both appellant and Jivanbhai proceeded towards Vadodara District. But, as the Car of the appellant was lying near ' Gohil ' Hospital, both of them reached the said place, by taking lift in a motor-cycle driven by one Rakeshbhai Arvindbhai as the said person was known to Jivanbhai. Thereafter, the appellant and Jivanbhai proceeded towards Vadodara District in the said Car.

2.5 During the course of journey, the appellant, by using fraudulent means, made Jivanbhai consume sleeping pills. Thereafter, he drove his Car in a lonely place near a Village named 'Gandhara' near Shinor and informed Jivanbhai that he had killed Himmatbhai. On hearing this, Jivanbhai got enraged and a scuffle took place between them. In the process, the appellant also killed said Jivanbhai

by strangulating him and then threw his dead body in a bush in the said Village.

2.6 Thereafter, on 20.10.1993, at around 1600 hrs., the appellant came to the house of deceased Himmatbhai and informed Bhadraben, wife of deceased Himmatbhai, that as deceased Himmatbhai is required to be operated for the treatment of Kidney stones, both deceased Himmatbhai as well as Jivanbhai have dropped at Vadodara District and that she is also required to go to the Hospital in Nadiad along with whatever diamonds / cash she could collect. Therefore, in the evening hours of 20.10.1993, Bhadraben informed one Dineshbhai Manibhai Patel, PW – 2, business partner of deceased Jivanbhai, to come to her home on the next day morning for taking care of her children as she had to leave for Vadodara at around 1000 hrs. and that deceased Jivanbhai would come back in the evening on that day. She also informed said Dineshbhai Manibhai Patel that since deceased Himmatbhai was to be operated at Nadiad Hospital, she is required to stay along with deceased

Himmatbhai.

2.7 On 21.10.1993, some time before 1100 hrs., the appellant and Bhadraben proceeded towards Vadodara in his Car. During the course of journey, the appellant, by employing fraudulent means, made Bhadraben consume sleeping pills and then drove his Car towards Bardoli – Jetpur Road. After parking his Car in a lonely area, the appellant strangulated Bhadraben to death and stole all the valuable that were in the possession of deceased Bhadraben. The appellant then drove his Car to Bardoli – Jetpur Road and threw the dead body of deceased Bhadraben in a lonely place near a sugar-cane field and also threw the X-ray Reports and all other medical case papers of deceased Himmatbhai at the said place. Thereafter, he drove back to his home.

2.8 In the evening hours of 21.10.1993, as none of the deceased persons had returned, said Dineshbhai Manibhai Patel made necessary enquiries from friends and relatives

and also made enquiry at the Vadodara residence of the elder brother of both deceased Himmatbhai and Jivanbhai. He also made necessary enquiry at the Urology Hospital at Nadiad. However, no information was received as regards the whereabouts of all the three deceased persons. Therefore, said Dineshbhai Manibhai Patel lodged a complaint before Navsari Town Police Station which was registered as *'Janwajog'* Entry No.38 of 1993. Investigation was carried out in the above said *'Janwajog'* entry.

2.9 In the meanwhile, on 22.10.1993, a cousin brother of both deceased Himmatbhai and Jivanbhai, one Nandlal Madhabhai Kalsaria, who was also searching for the whereabouts of the deceased persons, came to know that an unclaimed dead body was found in the vicinity of Sachin GIDC and that the same has been kept in New Civil Hospital, Surat. An entry to that effect was made by Sachin Police Station in the Station Register vide Entry No. 36 of 1993. Inquest 'Panchnama' was performed and a 'Panchnama' of the articles found from the dead body was also prepared.

2.10 Later, said Nandlal Madhabhai Kalsaria, along with some other persons, went to New Civil Hospital, Surat for the purpose of identifying the said dead body. On viewing the dead body, they could not identify the same as the body had started decomposing. Therefore, they went to Sachin Police Station, where they were shown the items / articles that were found with the said unclaimed dead body. When they were shown the clothes and the telephone diary etc. found along with the dead body, said Nandlal Madhabhai Kalsaria could identify the same to be that of deceased Himmatbhai. The dead body of deceased Himmatbhai was then sent for post-mortem. After performing post-mortem, the dead body was handed over to his relatives after issuing receipt to that effect. Then, the dead body was brought to Navsari and funeral ceremony was performed on the very same day, i.e. on 22.10.1993, wherein the appellant also remained present.

2.11 On the same day, i.e. on 22.10.1993 an information

was received by the police authority of Karjan Police Station that an unclaimed dead body was lying in a locality of 'Gandhara' Village near Shinor. Entry to that effect was made in the Station Register vide Entry No. 33 of 1993. Thereafter, on 23.10.1993, the said dead body was recovered and after performing Inquest 'Panchnama', the same was sent to S.S.G. Hospital, Vadodara for the purpose of carrying out post-mortem. On 25.10.1993, the said dead body was identified to be of deceased Jivanbhai.

2.12 Further investigation was carried out and statements of several witnesses were recorded. During the course of investigation, the police officials received cogent information against the appellant and, therefore, the appellant was arrested on 24.10.1993 at around 1230 hrs..

2.13 At the time of interrogation, the appellant admitted his guilt and showed his willingness to disclose the places where he had thrown the dead bodies of all the three deceased persons. The P.S.I. of Navsari Town Police Station, in

the presence of 'Panchas', prepared primary 'Panchnamas' to that effect. Thereafter, the appellant, Investigating Officer and the 'Panchas' went to the three different places in question in a police vehicle, as per the route / direction shown by the appellant. On visit of all the three places, only the dead body of deceased Bhadraben was found at the said place since the dead bodies of the other two deceased persons, viz. Himmatbhai and Jivanbhai, had already been recovered, initially, as unidentified dead bodies and, were later, handed over to their relatives after they were identified, as stated hereinabove.

2.14 Thereafter, the appellant, Investigating Officer and 'Panchas' went to the place where the appellant had thrown the dead body of deceased Bhadraben in a police vehicle as per the route / direction shown by the appellant. The dead body was identified by Nandlal Madhabhai Kalsaria to be of deceased Bhadraben viz. wife of his cousin brother – deceased Himmatbhai. 'Panchnama' was drawn and 'muddammal' items found from the dead body of the

deceased were seized. The appellant also disclosed the place where he had hidden the diamonds and other valuables stolen by him after killing deceased Bhadraben. A 'Panchnama' to that effect was also done. *'Marnottar'* form was filled up and 'yaadi' was sent to New Civil Hospital, Surat for the purpose of performing post-mortem. After performing the post-mortem, the dead body was handed over to the relatives of the deceased.

2.15 On the basis of information received from Karjan Police Station, the Investigating Officer of Navsari Town Police Station visited S.S.G., Vadodara where the dead body of deceased Jivanbhai was kept. On that basis, a complaint was filed against the appellant by the P.S.I. of Navsari Town Police Station, which was registered as I – C. R. No. 103 of 1993 for offences punishable u/s. 302, 364, 397 & 204 of the I.P.C..

2.16 The investigating agency also recorded statements of several witnesses and came to know about the

fact that the appellant had suffered huge losses in his business and that he was heavily indebted. In connection with the said fact, statements of several witnesses were also recorded. The 'muddammal' vehicle – Fiat Car was seized and 'muddammal' articles from the said vehicle were also seized. On receipt of the F.S.L. report, PM Note and the medical reports, they were kept in the investigation file.

2.17 On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class, Navsari. As the case was exclusively triable by the Court of Sessions, the learned J.M.F.C., Navsari committed the case to the Sessions Court, Valsad at Navsari which was numbered as Sessions Case No.28 of 1994. The case was then transferred to the Court of learned Addl. Sessions Judge for disposal on merits. On production of the appellant, the learned Addl. Sessions Judge framed the charge and as the appellant pleaded not guilty to the said charge, trial was conducted against the appellant.

3.0 The prosecution has examined in all forty six witnesses viz. PW – 1 Dr. Harshadbhai Balwantrai at Exhibit 23, PW – 2 Dineshbhai Manilal at Exhibit – 24, PW – 3 Hemantbhai Hiralal Maisuriya at Exhibit – 25, PW – 4 Nandlal Madhabhai at Exhibit – 27, PW – 5 Kamlaben Harishbhai at Exhibit – 28, PW – 6 Babubhai @ Arvindbhai Mannilal at Exhibit – 31, PW – 7 Arvindbhai Mathurbhai Pandav at Exhibit – 32, PW – 8 Jayantilal Ramanlal Gandhi at Exhibit – 37, PW – 9 Rakeshbhai Arvindbhai at Exhibit – 38, PW – 10 Vijaybhai Nathalal Kalsaria at Exhibit – 39, PW – 11 Dr. Meghrekha Hasmukhbhai Mehta at Exhibit – 41, PW – 12 Chetanbhai Amrutlal at Exhibit – 49, PW – 13 Shaileshbhai Ranjitsinh Vasiya at Exhibit – 53, PW – 14 Jaswantbhai Motilal Mehta at Exhibit – 56, PW – 15 Rameshbhai Mohandas Patel at Exhibit – 59, PW – 16 Mukeshbhai Manilal Gandhi at Exhibit – 62, PW – 17 Kantibhai Jethabhai Solanki at Exhibit – 69, PW – 18 Dhirajbhai Ranchhodbhai at Exhibit – 72, PW – 19 Dr. Iliaz Isar Mohd. Sheikh at Exhibit – 78, PW – 20 Om Prakash Gautamprasad Tripathi at Exhibit – 79, PW – 21 Nathalal Madhabhai Kalsaria at Exhibit – 91, PW – 22 Dhanjibhai Shamjibhai at Exhibit – 92,

PW – 23 Dr. Rakeshbhai Narendranath Tandon at Exhibit – 95, PW – 24 Kaushikbhai Jayantilal Amin at Exhibit – 98, PW – 25 Rohitbhai Fulchand Shah at Exhibit – 99, PW – 26 Dineshbhai Nagindas Kapadia at Exhibit 101, PW – 27 Rameshbhai Chotubhai Bharucha at Exhibit – 102, PW – 28 Thakorbhai Kalidas at Exhbit – 103, PW – 29 Somabhai Shivram Prajapati at Exhibit – 104, PW – 30 Girishbhai Thakorbhai Parmar at Exhibit – 109, PW – 31 Manibhai Atmarram Patel at Exhibit – 111, PW – 32 Jayantibhai Joitaram at Exhibit – 112, PW – 33 Dharamsinh Rudabhai at Exhibit – 113, PW – 34 Jayeshbhai Mohanlal Bhavsar at Exhibit – 115, PW – 35 Shanabhai Dahyabhai at Exhibit – 122, PW – 36 Vasantbhai Ranchhodbhai Patel at Exhibit – 124, PW – 37 Arvindbhai Mangaldas Shah at Exhibit 125, PW – 38 Pravinbhai Mohanlal Shah at Exhibit – 128, PW – 39 Hasumatiben Haribhai Saler at Exhibit – 141, PW – 40 Vinaybhai Harishbhai Shukla at Exhibit – 145, PW – 41 Raijibhai Manabhai at Exhibit – 148, PW – 42 Jasuben Desaibhai Chaudhary at Exhibit – 153, PW – 43 Jaswantbhai Budhabhai Patel at Exhibit – 155, PW – 44 Henry Julius Kin at Exhibit – 158, PW – 45 Dipakbhai Raghunath

Chauhan at Exhibit – 168 and PW – 46 Bharatsinh Prabhatsinh Sarvaiya at Exhibit – 181.

3.1 The prosecution has also placed reliance upon several documentary evidences and, more particularly, the evidence in the form of PM Notes, Report of the F.S.L., the 'Panchnamas' of the places from where the dead bodies of deceased were found, the 'muddamal' articles seized from the scene of offences, etc..

3.2 On submission of the closing `purshis', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order and convicted the appellant for the offences, as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 Mr. U. M. Panchal learned counsel for the appellant has submitted that the entire case of the

prosecution rests upon circumstantial evidence and that the prosecution has not been able to prove the chain of circumstances so as to connect the appellant with the crime in question. He has, therefore, submitted that the appellant is required to be acquitted from the alleged offence by granting him the benefit of doubt.

4.1 Learned Advocate has further submitted that the prosecution has not been able to prove the aspect of "last seen together" and that the evidence to that effect, which is on record of this Court, is not trustworthy and reliable. He has contented that the discovery 'Panchnamas' of the places from where the dead bodies of all the deceased persons were found, have not been properly done and that, in the eyes of law, it cannot be said to be discovery 'Panchnama'.

4.2 Learned Advocate has submitted that so far as the aspect of alleged heavy debts of the appellant is concerned, there is no evidence on record which could lead us to believe that the said fact was the reason behind the

commission of the alleged offence in question by the appellant. He has, therefore, submitted that there was no motive behind the commission of the alleged offence.

4.3 Learned Advocate has further contented that even if the Report of the F.S.L. is believed to be true, then also it could not be relied upon for recording conviction, as the same does not connect the appellant with the crime in question in any manner whatsoever. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside and the appellant is required to be acquitted of the alleged offence in question.

4.4 Learned Advocate has further submitted that the appellant is an old-aged person and that he is not keeping good-health. He has, therefore, submitted that if the Court comes to the conclusion that the guilt of the appellant has been proved, then the Court may take a sympathetic view of the matter by reducing the sentence of the appellant to the one already undergone by the appellant and release

him from the custody .

5.0 Mr. H. L. Jani learned APP has vehemently objected to the grant of this appeal. He has submitted that there is no dispute to the fact that the entire case of the prosecution rests upon circumstantial evidence. However, the chain of circumstances leading to the guilt of the appellant has been proved beyond doubt.

5.1 Learned APP has submitted that from the evidence on record, it is clearly established that the appellant was lastly seen together with the deceased persons at different places and at different point of time. He has contented that the discovery 'Panchnamas' of the places where the appellant had thrown the dead bodies of the deceased persons clearly connect the appellant with the crime in question. He has submitted that the diamonds and other valuables stolen by the appellant after killing deceased Bhadraben were hidden in a place which was known to the appellant alone and that the same were

discovered by way of discovery 'Panchnama' u/s. 27 of the Cr.P.C. at the instance of the appellant himself. These facts clearly go to show that the appellant had committed the crime in question.

5.2 Learned APP has further submitted that there is ample evidence on record which shows that the appellant was heavily indebted and that prior to the incidents in question, the appellant had visited the house of deceased – Himmatbhai requesting to provide him with necessary financial help. Moreover, the conduct of the appellant of stealing cash and other valuables after killing deceased Bhadraben, also shows as to how badly the appellant was in need of money. These facts clearly establish that there was motive behind the commission of the offence in question.

5.3 Learned APP has further submitted that this is a case of cruel murder of three persons belonging to the same family, who are also the nearest relatives of the appellant, which cannot be viewed lightly and, therefore, the request

of reducing the sentence awarded by the Court below on humanitarian grounds, should not be considered in view of the principle laid down by the Apex Court in several decisions. In above view of the matter, the appeal deserves to be dismissed.

6.0 We have gone through the oral as well as documentary evidence shown to us by learned counsel for the respective parties as also the impugned judgment and order passed by the Court below. Before proceeding with the matter on merits, it would be relevant to refer to certain facts which are undisputed. Deceased Himmatbhai was the co-brother of the appellant, meaning thereby that the appellant and all the three deceased persons were close relatives. The deceased persons – Himmatbhai, Bhadraben and Jivanbhai were residing together along with their families in "Tulsivan Society" of Navsari Taluka. Both deceased Himmatbhai as well as Jivanbhai were doing business of trading in diamonds and other works related to it. Deceased Himmatbhai was doing his business separately by running his

factory of diamonds while deceased Jivanbhai was doing business in partnership with one Dineshbhai Manibhai Patel, PW – 2, by dealing in rough diamonds and also of polishing the same. Dineshbhai Manibhai Patel, PW – 2, was residing along with his family in a Society near to that of the deceased persons.

7.0 From the record, it appears that the appellant was engaged in the business of manufacture of wooden boxes and was also dealing in diamonds at Valsad District. It also appears that the appellant was heavily indebted on account of the huge losses that he had suffered in his business of manufacture of wooden boxes. The said fact is proved from the evidence of PW–24 – Kaushikbhai Jayantilal Amin at Exhibit – 98, PW–27 – Rameshbhai Chotubhai Bharucha at Exhibit – 102, PW–28 – Thakorbhai Kalidas at Exhibit – 103, PW–29 – Somabhai Shivram Prajapati at Exhibit – 104, PW–31 – Manibhai Atmarram Patel at Exhibit – 111 and PW–32 – Jayantibhai Joitaramat at Exhibit – 112.

7.1 The evidence led by the aforesaid witnesses clearly shows that the appellant had taken financial help from them at different times and that to many of them, the amount of loan so taken was still outstanding. Therefore, the possibility could not be ruled out that the appellant had met deceased Himmatbhai so as to get some financial help from him as deceased Himmatbhai was one of his nearest relatives and was also engaged in the business of trading in diamonds.

7.2 From the evidence led by PW – 7 at Exhibit – 32, it is proved that on 18.10.1993, in the evening hours, the appellant visited the house of deceased Himmatbhai. However, it does not appear as to whether the appellant had asked for any financial help from deceased Himmatbhai at that point of time. It may be because of the presence of this witness in the house of deceased Himmatbhai at that point of time. Be that as it may, the fact remains that the appellant was present in the house of deceased Himmatbhai in the evening hours on the day prior to the date of incident,

i.e. 18.10.1993.

7.3 On the next day, i.e. on 19.10.1993, the appellant and deceased Himmatbhai proceeded towards Valsad in the Fiat Car of the appellant bearing Registration No. GTN – 5771. During the course of journey, when deceased Himmatbhai showed his inability to provide him with financial help, though it was agreed by him on the earlier day, the appellant got enraged and, ultimately, killed deceased Himmatbhai with a hammer blow on the head. On realizing that deceased Himmatbhai had expired, the appellant dumped his dead body in an area near Sachin, GIDC.

7.4 On the next day, i.e. on 21.10.1993, the dead body of deceased Himmatbhai was found on the basis of the information given to Sachin Police Station by PW – 3 and the same has been proved by the evidence led by PW – 3 at Exhibit – 25. The dead body was identified to be of deceased Himmatbhai which is proved from the evidence led by PW – 4 at Exhibit – 27. This witness has identified the dead body on

the basis of the clothes which the deceased had worn at that point of time and also on the basis of the 'muddammal' article – telephone diary, found along with the dead body, as he could identify the hand-writings of deceased Himmatbhai. Thus, the prosecution has been able to prove that the dead body, which was found near Sachin GIDC, was the dead body of deceased Himmatbhai. Nothing contrary has come on record from the depositions of these two witnesses, viz. PW – 3 & PW – 4, which may lead us to believe their evidence to be untrue or unreliable.

7.5 At this juncture, the conduct of the appellant is required to be noted which speaks volumes about his ill-intentions and ill-designs. During the funeral ceremony of deceased Himmatbhai held on 22.10.1993, the appellant remained present at the residence of the deceased throughout the entire ceremony and also remained present on the next day, i.e. when the mourning ceremony (*Besna*) was held. The said fact is established from the evidence led by PW – 2 at Exhibit – 24. It is also established from the

evidence of this witness that earlier, when the whereabouts of all the three deceased persons was not known, this witness had also made a telephonic enquiry at the residence of the appellant in Valsad as the appellant was one of the nearest relatives of the deceased persons. At that time, the son of the appellant – Dilipbhai, had informed this witness that the appellant had gone to Bombay for a period of about two to three days. But, as discussed hereinabove, the appellant was very much present in Navsari and that, during the said period, he had attended the funeral as well as the mourning ceremony of deceased Himmatbhai. The aforesaid conduct of the appellant clearly goes to show as to how the appellant has tried to mastermind his guilt. Nothing contrary has come out from the deposition / cross-examination of this witness which may lead us to believe his evidence to be unreliable.

8.0 PW – 7 at Exhibit – 32 is a relative of the deceased persons and is also engaged in the business of trading in diamonds. This witness has specifically deposed in his oral

evidence that on 19.10.1993, at around 1100 hrs., while he had gone to 'Sattapir' market, he had met deceased Jivanbhai and his business partner – Dineshbhai. At that time, as deceased Jivanbhai and said Dineshbhai had to go to a place named 'Jalaalpar' for some business purpose, deceased Jivanbhai informed this witness to take his motor-cycle alongwith him. Thereafter, both deceased Jivanbhai and Dineshbhai left for 'Jalaalpar'. Some time later, PW – 8 came and asked this witness for the whereabouts of deceased Jivanbhai. This witness informed PW – 8 that deceased Jivanbhai had gone to some place and asked PW – 8 as to for what purpose he wanted to meet deceased Jivanbhai. In reply, PW – 8 informed that a person wearing black spectacles and a cap and who has introduced himself as the maternal uncle of deceased Jivanbhai, was standing near the tower and that he wanted to meet deceased Jivanbhai. Therefore, they went to the said place. On reaching the said place, they could not find anyone with the said description and they came back to the market place.

8.1 Thereafter, at around 1330 hrs., this witness and PW – 6, proceeded to their residence in the motor-cycle of deceased Jivanbhai. When they reached near Navsari High School, they met the appellant, who, at that point of time, was wearing black spectacles and a cap. Therefore, this witness asked the appellant as to whether he had sent any person asking for deceased Jivanabhai, to which, the appellant replied in the negative. Thereafter, the appellant enquired about the whereabouts of deceased Himmatbhai from this witness and, in reply, this witness informed that deceased Himmatbhai would be available at home. The appellant had also enquired from this witness as to whether any Train was available for Valsad at around 1400 hrs. as he had not come in his motor-car but, had come by Train. The appellant sat on the motor-cycle as a second pillion rider along with PW – 6. Later, this witness dropped the appellant near the house of deceased Himmatbhai. PW – 8 at Exhibit – 37 has narrated the same facts as has been deposed by PW – 7 and, therefore, we are not reproducing the same. Nothing incriminating has come out from the depositions /

cross-examinations of PW – 7 & PW – 8 which may lead us to believe their evidence to be unreliable.

8.2 Thus, through the evidence led by PW – 2 at Exhibit – 24, PW – 6 at Exhibit – 31, PW – 7 at Exhibit – 32 and PW – 8 at Exhibit – 37, the prosecution has been able to prove the presence of appellant at Navsari during the period from 18th - 23rd October 1993. The ill-intentions of the appellant are evident from the fact that he had changed his regular appearance by way of putting black spectacles and a cap and that of attempting to contact deceased Jivanbhai by way of introducing himself as his maternal uncle and also from the fact of enquiring about the whereabouts of deceased Himmatbhai from PW – 7 though he had already killed deceased Himmatbhai brutally in the morning hours of 19.10.1993.

9.0 Thereafter, on 19.10.1993 at around 2.00 p.m., the appellant met both deceased Jivanbhai and Bhadraben at their residence and, later, informed deceased Jivanbhai to

accompany him up to Gohil Hospital, as he had parked his Fiat Car there. The said fact is evident from the deposition of PW – 9 Rakeshbhai Arvindbhai at Exhibit – 38. In his deposition, PW - 9 has specifically stated that on 19.10.1993, at around 2.15 p.m., while he was going to his house for having lunch, he met deceased Jivanbhai in the company of the appellant, who were standing near Karna Apartments and opposite to Patel Society. At that time, deceased Jivanbhai requested this witness to drop both of them near Gohil Hospital. Accordingly, this witness dropped deceased Jivanbhai and the appellant near Gohil Hospital. Here, it may be noted that during the course of journey, when this witness had asked deceased Jivanbhai as to why he wanted to go near Gohil Hospital, in reply, deceased Jivanbhai had informed him that the Fiat Car of the appellant was parked there.

9.1 Thus, from the deposition of this witness, the prosecution has proved that on 19.10.1993 deceased Jivanbhai was last seen with the appellant and that both of

them had gone to a place near Gohil Hospital as the Fiat Car of the appellant was parked at that place. Nothing contrary has come out from the deposition of this witness which may lead us to believe his evidence to be unreliable.

9.2 Thus, even, so far as the case of deceased Jivanbhai is concerned, the prosecution has been able to prove that deceased Jivanbhai was lastly found with the appellant on 19.10.1993 at around 1415 hrs.. Thereafter, as discussed in the earlier part of this judgment, deceased Jivanbhai was killed by the appellant by strangulating him and the dead body was thrown in a bush near Shinor. Originally, the dead body of deceased Jivanbhai was recovered as "unidentified dead body" but, later, it was identified by Nandlal Madhabhai Kalsaria, which is also proved from the deposition of PW – 15 at Exhibit – 59. The prosecution has also proved the 'Panchnama' of the place from where the dead body of deceased Jivanbhai was found at Exhibit – 71.

10.0 So far as the murder of deceased Bhadraben is concerned, it is a matter of record that in the evening hours of 20.10.1993, deceased Bhadraben informed PW – 2 to come and stay at her home along with his wife on the next day for the purpose of taking care of her children, as she had to go to Vadodara for getting necessary treatment to deceased Himmatbhai who was suffering from the ailment of kidney stones. Accordingly, on the next day, PW – 2 went to the house of deceased Himmatbhai. However, at that time, deceased Bhadraben was not present in the house.

10.1 In the evening, when neither of the deceased persons turned up, viz. deceased Himmatbhai, Jivanbhai or Bhadraben, PW – 2 made necessary enquiries from the friends and relatives of the deceased persons. On enquiry, it was known that neither of the three deceased persons had reached Vadodara or for that matter, even the Urology Hospital at Nadiad. As discussed hereinabove, this witness had also made necessary enquiry at the residence of the appellant in Valsad whereby, he was told by the son of the

appellant that the appellant had gone to Bombay for a period of two to three days. Therefore, as a last resort, PW – 2 filed the impugned complaint before Navsari Town Police Station. Thus, from the evidence discussed hereinabove, it is proved that deceased Bhadraben was last seen with the appellant at the residence of deceased Himmatbhai.

10.2 It is a matter of record that the dead body of deceased Bhadraben was recovered only after the appellant, during the course of interrogation, had showed his willingness to disclose the same and the same was discovered after the appellant had taken the police authority to the said place in the police vehicle in the company of 'Panchas'. Therefore, after preparing the discovery 'Panchnama', Inquest 'Panchnama' at Exhibit – 29 was done and the clothes and other articles found from the dead body of deceased Bhadraben were seized by way of 'muddammal' articles. The same is proved from the evidence led by PW – 37 at Exhibit – 125. Not only that by way of discovery 'Panchnama' at Exhibit – 126, the appellant has

also produced the diamonds and other valuables from a place which was known and accessible only to the appellant and the same has also been proved by the prosecution by way of the above referred evidence.

11.0 As stated above during the course of interrogation as the appellant had showed his willingness to disclose the places where he had thrown the dead bodies of all the deceased persons, 'Panchnamas' of all the three places were performed and the same has been proved by the prosecution. The 'Panchnama' of the place from where the dead body of deceased Himmatbhai was found was done at Exhibit – 58, of deceased Jivanbhai at Exhibit – 66 and of deceased Bhadraben at Exhibit – 63. Thus, the prosecution has been able to prove that all the three deceased persons were killed by the appellant and that their dead bodies were thrown at three different places by the appellant. The 'muddammal' article seized from the Fiat Car and the 'muddammal' articles found from the dead bodies of all the three deceased persons and the Report given by the F.S.L. to

that effect clearly indicate the involvement of the appellant in the crime in question.

12.0 So far as the aspect of homicidal death is concerned, there is ample evidence on record to that effect and the prosecution has been able to prove the same without any doubt. The aspect of homicidal death of deceased Himmatbhai is proved from the PM note at Exhibit – 42 which is also supported by the oral evidence of the Doctor who has been examined as PW – 11 at Exhibit – 41. In the same way, so far as the aspect of homicidal death of deceased Jivanbhai is concerned, the prosecution has proved the same from the PM Note at Exhibit – 131 and the deposition of the Doctor as PW – 23 at Exhibit – 95 while for deceased Bhadraben, the same has been proved from the PM Note at Exhibit – 81 and the deposition of the Doctor as PW – 19 at Exhibit – 83. The cause of death of the deceased persons has also been proved by the prosecution. Thus, the prosecution has also proved the aspect of homicidal death of all the three deceased persons. But, since the said aspect

has not been raised before this Court, we are not dealing with the same in detail.

13.0 From the above discussion, it could be concluded that the prosecution has been able to prove the entire chain of circumstances, including the aspect of last seen together, beyond reasonable doubt. The medical evidence and the F.S.L. Report also support the case of the prosecution as discussed hereinabove. Now, since it is proved from the evidence discussed hereinabove that the appellant has brutally killed three members of the same family, who were also his nearest relatives, we are unable to take a lenient view in the matter. The Apex Court has in a catena of decisions held that in serious crimes like the one in hand, the Court should not reduce the sentence on the ground of mercy. In that view of the matter, we are not inclined to reduce the sentence awarded to the appellant even on the ground of mercy or the age / sickness of the appellant.

14.0 In view of the above discussion, we are of the

considered opinion that the prosecution has succeeded in proving the involvement of the appellant in the crime in question. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

15.0 In the result, the appeal is dismissed. The appellant – accused is on bail and, therefore, his bail bonds are cancelled. The appellant – accused is directed to surrender to custody within a period of ***TWO MONTHS*** from today. The investigating agency shall be at liberty to take necessary action in accordance with law if the appellant does not surrender to the custody within the time-limit prescribed hereinabove.

(R. P. Dholakia, J.) (K. S. Jhaveri, J.)

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